# QUEENSTOWN LAKES DISTRICT COUNCIL

## Hearing of Submissions on the Proposed District Plan

Report 16.16

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps
Parkins Bay and Glendhu Bay


Commissioners
Trevor Robinson (Chair)
Jenny Hudson
Calum MacLeod

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**Attachments:**
**Appendix 1-** Revised GBT Structure Plans

Further Submitters:
FS 1034.239 Upper Clutha Environmental Society Inc
FS 1053 Tui Advisors
FS 1094.7 John May
FS 1125 NZ Fire Service
FS 1149 Noel Williams

# 1. SUMMARY OF RECOMMENDATIONS

## 1.1. Overall Recommendation

1. We recommend the submission seeking imposition of a new zone be rejected. It follows that Further Submissions 1034, 1053, 1084 and 1149 should be accepted and Further Submission 1125 rejected. We recommend that the submitter's related submission seeking removal of the Outstanding Natural Landscape classification over the site similarly be rejected.

## 1.2. Summary of Reasons for Recommendation

2. The submitter presented no evidence supporting the requested removal of ONL classification over the site. The suggested special zone fails to appropriately recognise and provide for protection of the ONL from inappropriate subdivision, use and development, or to adequately manage other potential adverse effects resulting from the proposed development of the site. The numerous attempts that have been made to address the defects in the proposed zone provisions, while materially improving the position, have failed to achieve an acceptable framework for future development of the site to the extent it is not already enabled by the resource consent held in respect of the site. Retention of the existing Rural Zone over the site is the most appropriate way to achieve the objectives of the PDP.

# 2. PRELIMINARY MATTERS

## 2.1. Subject of Submission

3. This submission relates to 4 separate properties currently making up Glendhu Station:
   a. Lots 1 and 3 DP 457489 (Computer Freehold Register 602576) being some 187.6434 ha;
   b. Lots 2, 9-11 DP 457489 (Computer Freehold Register 602575), being some 15.5715 ha;
   c. Lots 4-5, DP 457489 (Computer Freehold Register 602577), being some 44,2105ha; and
   d. Lots 6-8, DP 457489 Sections 1-2, 18, 19, 22-23 S) Plan 347712, 9 (Computer Freehold Register 602577), being some 2588.5685ha.

4. The combined site has a total of 2834 hectares and is located at 1215 Wanaka-Mt Aspiring Road. We were advised that the separate properties making up the site are in the ownership of two companies that we infer are associated with the submitter. We will refer to the submitter as GBT throughout this report.

## 2.2. Outline of Relief Sought

5. The submission seeks rezoning of the combined properties making up the site from its current Rural to a new special zone entitled the Glendhu Station Zone.

6. The submission proposes a Structure Plan to establish the spatial layout of development within the proposed Glendhu Station Zone with the identification of some 7 'activity areas', as follows:
   a. A Lakeside Activity Area (LS) including:
      i. A series of buildings, including 12 visitor accommodation units;

ii. Functions and events;
iii. A jetty providing public access to the activity area from Lake Wanaka;
iv. A golf course clubhouse with restaurant and café (with associated vehicle access and parking);

b. A Golf activity area (G) incorporating an 18 hole golf course, maintenance and operational facilities and an underpass;
c. A Residences activity area (R) with provision for 50 residences and/or visitor accommodation, and areas of native revegetation;
d. A Lodge activity area (L) providing for visitor and residential accommodation through a lodge and a small number of detached accommodation villas;
e. Campground activity area (C) providing:
   i. Expansion of the Glendhu Bay campground across the Wanaka-Mt Aspiring Road;
   ii. New road access alignment;
   iii. Visitor accommodation activities.
f. A Farm Homestead activity area (FH) including:
   i. Commercial activities intended to complement and support the campground);
   ii. Visitor accommodation including farm stays, conferences, events and functions (e.g. weddings), farm tours, staff accommodation, small scale abattoir, butcher, packing shed, craft brewery, and tannery;
g. An Open Space Farm Preserve activity area (OS/F) for the balance of the site including:
   i. Farming activities;
   ii. Recreation activities including public access trails, areas of ecological enhancement, small-scale eco-themed visitor accommodation, an air strip and residential accommodation.

7. Further submitters John May, UCES, Tui Advisors and Noel Williams opposed the submission in its entirety. New Zealand Fire Service supported the submission in part (as regards consequential changes the submitter sought to Chapter 27 (Subdivision)).

8. As the hearing of GBT's submission proceeded, aspects of the proposed Structure Plan were varied, with the result that:
   a. The Lodge activity area formerly forming part of the Structure Plan was deleted and the land concerned absorbed into the OS/F activity area;
   b. The location and shape of the LS area was shifted eastward along the lake shore, with the result that an area of LS land formerly on an upper terrace was added to the G area. To the extent the LS area occupied additional land, this was achieved by a corresponding reduction in the G area;
   c. Part of the identified R area was deleted and the land absorbed into the G area;
   d. The four remaining R areas were absorbed into one (including what was formerly OS/F), with the 50 residential building platforms now identified on the face of the Structure Plan;
   e. Part of what was formerly OS/F land in the area of the Fern Burn Stream has been converted to G.

9. As we will discuss later in this Report, GBT's planning witness, Mr Ferguson, provided us with an alternative Structure Plan showing a reduced area covered by the Proposed Glendhu Station Zone, with the balance left zoned Rural. On balance, Mr Ferguson supported that alternative.

10. For convenience, however, we have attached as Appendix 1 to this Report the Structure Plan for the larger area, in order that we might more readily explain the issues that it posed.

11. We note that although the shape of the GBT's proposal changed through the process, it did not formally amend its proposal by, for instance, withdrawing aspects that were no longer being pursued.

## 2.3. Consenting Background

12. The relief sought by GBT overlaps with the activities authorised by an existing resource consent providing for a golf resort, including a golf course and associated buildings, residential dwellings and a range of covenants and requirements for public access. That resource consent was granted by a decision of the Environment Court[1] following the release of two interim decisions[2]. We have referred to these decisions as the *Parkins Bay* decisions throughout this report. Mr Ferguson provided us with copies of two subsequent variations to the conditions of that consent providing for amendments to the staging requirements and to the golf course layout.

13. Key differences between the activities authorised by the existing resource consent and those envisaged by the revised Structure Plan that Mr Ferguson tabled are:
    a. The location of the golf course on the site has changed in line with the amendments to the Structure Plan noted above;
    b. The location of the LS area has similarly changed, as described above;
    c. The number of residential/visitor accommodation units proposed in the R Activity Area has been increased from 42 to 50;
    d. The resource consent did not provide for the activities proposed for the C Area;
    e. The resource consent did not provide for the activities proposed in the FH Activity Area;
    f. While the public access trails and ecological enhancement provided for in the Structure Plan were the subject of conditions, the balance of activities proposed in the OS/F Area were not the subject of consent;
    g. The resource consent provided for a series of restrictive covenants applying to different areas of the site. We were provided with evidence that those covenants have now been registered on the respective titles. To the extent that the Structure Plan envisages activities occurring that would not comply with the covenants, we were advised that GBT would seek amendments to the covenants. We describe the process for that occurring further below;
    h. Consent conditions provide for a series of easements to enable public access across defined routes over the site. In each case, advice notes recorded that the Council would be responsible for maintenance of the access route. We were likewise provided with evidence that those easements have now been registered on the respective titles;
    i. The consent conditions have extensive requirements as to staging of the development authorised by the consents that have not been carried over into the proposed zone provisions. The effect of those conditions is to require the development to occur in three stages, each of which is to occur within 12 months of the completion of the previous stage. The first stage entails the golf course, lakeside developments and 10 residential dwellings, plus all the earthworks for the full number of house sites. Removal of conifers from identified areas of the site and revegetation planting is also required in that stage. The second stage requires further revegetation planting and provides for the construction of 20 more dwellings. The third stage requires the remaining vegetation planting to be completed and the balance of the dwellings constructed. Stock is required to be excluded at this stage. We were advised that the proposed zone rules for building are related to the revegetation strategy on the site and would link revegetation with construction of buildings in the R Area.

[1] Upper Clutha Tracks Trust v QLDC [2012] NZ EnvC 79
[2] Upper Clutha Tracks Trust v QLDC [2010] NZ EnvC 432 and [2012] NZ EnvC 43

14. When we visited the site, earthworks for the initial group of residences forming part of Stage 1 of the authorised building program were underway and a number of building platforms were able to be identified. In addition, a substantial area of the site had been cleared and grassed in the area of the proposed golf course, but not in the manner that we would envisage is ultimately planned (no identifiable golf holes were, for instance, able to be identified).

15. Our subsequent observation of the site from the Wanaka to Mt Aspiring road indicates that development of the site had not materially changed**.**

## 2.4. Description of the Site and Environs

16. The site is located on the western edge of Lake Wanaka and stretches from the western side of Glendhu Bay to the Matukituki Valley. The eastern edge of the site is approximately 12.5km by road from the township of Wanaka via the Wanaka - Mt Aspiring Road which provides the only road access. Motatapu Road joins the Wanaka - Mount Aspiring Road at Glendhu Bay from the south and provides access up the Motatapu Valley.

17. Glendhu Bay is well known for its picture postcard type appearance with willows and poplars along the lake shore and in the delta of the Fern Burn. There is an existing campground at Glendhu Bay that extends over 1km along the lake shore on the true right bank of the Fern Burn. We were told that the campground is very popular with campers, boaters and picnickers and is generally full to capacity over the peak holiday months. The Glendhu Bay campground is an 'old-style' campground with relatively few central structures so that off-peak, there are few signs of the turmoil that we understand occurs between Christmas and New Year. When we visited the site as part of our site visit (in early May) the campground was practically deserted. Parkins Bay is, if anything, even more sheltered and unoccupied than Glendhu Bay, but it shares a similar picturesque foreshore appearance.

18. The landscape of both Glendhu and Parkins Bay is dominated by the lake and the major enclosing mountain ranges and peaks. The site the subject of submission is on lower landforms between those peaks and the lake and has been farmed since the 1850s. South of Glendhu Bay, and bisected by the Motatapu Road, the Fern Burn flats form a distinct element of the landscape. In its first Parkins Bay decision, the Environment Court found that while those flats, "*have a different character from the surrounding mountains… despite the utilitarian character of the paddocks, the lack of houses and the proximity of the lake make the flats attractive and a natural component of the wider landscape.*[3]*"*

19. For her part, GBT's landscape witness, Ms Yvonne Pfluger, described the shelterbelts, hedges and small exotic conifer plantations as giving the valley a more structured and modified appearance than the steeper surrounding slopes.

20. The Fern Burn itself is largely lined with willows. There is a group of farm houses, other farm buildings and converted farm buildings forming part of Glendhu Station between the Fern Burn and Motatapu Road, near its intersection with the Wanaka - Mount Aspiring Road. The Glendhu Station homestead sits in the trees on the true right bank of the Fern Burn closer to the lake.

21. Historically, the Parkins Bay flats have had a similar appearance to the area south of Glendhu Bay, but with even fewer built elements. This is, however now in the process of being

[3] [2010] NZ EnvC 432 at [80]

overtaken by the development accompanying the exercise of the resource consents noted above.

22. West of Parkins Bay, the Wanaka - Mount Aspiring Road hugs the outside edge of the Glendhu Bluff before descending into the downstream end of the Matukituki Valley. Travellers heading east look out over Parkins Bay, and the flats behind the bay as they come around the Bluff. The western area of the site sits between the Matukituki River and the Wanaka - Mount Aspiring Road.

23. The road to the Treble Cone Ski field joins the Wanaka - Mount Aspiring Road in this area and winds up from the floor of the Matukituki Valley. The ski field itself is largely invisible from the floor of the valley.

24. Beyond the western boundary of the site, the road continues through the valley floor making up Matukituki Station (and further on, Mt Aspiring Station). That area is described in greater detail in our Report 16.1.

25. The road continues beyond the entrance to Mount Aspiring National Park (although a number of watercourses need to be forded, meaning that it is generally suitable only for 4-wheeel drive vehicles), connecting ultimately to a number of tramping and climbing trails in the National Park.

26. The PDP identifies the entire site, and indeed the wider area, as an ONL. Roy's Peninsula, which encloses Parkins Bay and the adjacent Paddock Bay to the northeast, is separately identified as an ONF sitting within the wider ONL.

27. Although the Environment Court initially formed the view that the Fern Burn area was a visual amenity landscape rather than an ONL[4] the Court reconsidered that view in the first Parkins Bay consent decision[5] and held that the Fern Burn Flats were too small an area to constitute a landscape in their own right. The Court emphasised in its conclusion the dominance of the ring of mountains around the Fern Burn flats. In the Court's view, "*the surrounding mountains and lake have such a strong influence that the flats and rounded hills are all perceived as part of the one landscape."*

28. We note that the Court emphasised that the ONL around the consent site is a very complex landscape including two highly modified areas which it described as being very different from most of the embedding landscape. Those two areas are the Fern Burn Flats and the Matukituki River delta which the Court described as pastoral, in the English sense of being green and soft (rather than having the brown and harsher texture of an Australasian pastoral run). The Courts concluding comment[6] was:

*"Due to the proximity of the lake, the surrounding mountains and the absence of many buildings, these areas feel natural."*

29. Although GBT sought in its submission to challenge the ONL classification over that part of the site in the Fern Burn flats, this aspect of its submission was not pursued and GBT's landscape witness, Ms Pfluger, agreed with its classification as an ONL, largely for the reasons set out in

[4] Refer *Wakatipu Environmental Society and Lakes District Rural Landowners Inc v QLDC* C73/2002
[5] [2010] NZ EnvC 432 at [79]
[6] At paragraph [81]

the Environment Court's 2010 decision. Her view was that while it had a degree of modification not generally expected of an ONL, it was too small an area to be identified as a stand-alone landscape. Dr Read giving evidence for Council, was likewise of that view. Given the absence of any landscape evidence supporting the submission, we do not need to address it further.

### 2.5. The Submitter's Case for Rezoning

30. Ms Baker-Galloway, counsel for GBT, advised us that the submitter puts its case firmly on the basis of the 'existing environment'. Accordingly, Ms Baker-Galloway submitted that the focus needed to be on the aspects of the proposed zone which are beyond the level of development provided for in the consent. As regards the translation of the consent conditions to a rule framework, she advised the intent has been to reflect "*all critical aspects"* of the consent, but to refine those conditions "*where possible and appropriate"*.

31. Consistent with that position, she advised that GBT was not seeking to 'codify' the existing consents which in her words "*stand on their own"*. Rather, the intention underlying the proposed zone was stated to be to:

    a. *Provide for a similar level and type of development as provided for through the Environment Court's Parkins Bay consents, which additions of the Camp Ground and Farm Homestead activity area and 8 further dwellings in the Residential Activity Area;*

    b. *Be more flexible and easier to implement;*

    c. *Secure the same or better environmental protection and enhancements as the consent;*

    d. *Enable medium to long term planning and future development to occur on an integrated and comprehensive basis.*

32. Ms Baker-Galloway emphasised that the original Parkins Bay proposal was a joint vision between Darby Partners and the McRae Family as owners of Glendhu Station to create a diversified and sustainable use of the Station land. She submitted to us that the proposal is of regional tourism and recreational significance and provides a comprehensive framework for increasing the indigenous biodiversity of Glendhu Station.

33. Ms Baker-Galloway also noted key findings of the Environment Court in relation to the consented proposal relating to the overall positive benefits presented which she submitted were of equal importance in the Plan process.

34. Ms Baker-Galloway referred us to the decision of the Environment Court in *Infinity Group v QLDC*[7] indicating that positive benefits might be taken into account in a zoning decision. Ms Baker-Galloway provided us with supplementary submissions on this aspect at our invitation. Those submissions largely paralleled submissions we received from another submitter, that are discussed in our report 16.14.

35. Lastly, she submitted that the approach of a special zone was consistent with the PDP framework, which includes other special zones.

[7] C010/2009

36. Mr John McRae, whose family own Glendhu Station, gave evidence for GBT describing the history of the Station, including its shift from a large-scale sheep and beef property to a smaller cattle herd combined with tourism ventures including farm tours, weddings and functions. Mr McRae drew the link between these changes and the more recent decision to move to organic farming. He emphasised the need for an eco-consumerism focus to maintain the sustainability of farm production. Mr McRae also explained how the original Parkins Bay consent proposal integrated with the farming operation, emphasising the need to diversify operations in order to provide capital to make the move into organic farming a success. Mr McRae described the steps the Station is already taking to convert original farm cottages and workers accommodation to allow function guests and tourists to stay on the farm and to convert the former woolshed to a wedding events venue.

37. Mr McRae addressed specifically the proposed expansion of the existing camp. He noted that in his view, there were opportunities to provide additional non-permanent visitor accommodation during peak times when the camp is very full (December through March) to complement the current camping options.

38. Mr John Darby gave evidence on the partnership between Darby Partners and the McRae family for the development of Glendhu Station. Like Mr McRae, Mr Darby emphasised the need for existing farming operations in the district to have the ability to diversify so that they are not solely reliant on the income generated by primary production.

39. Mr Darby described the process leading to grant of resource consent as one where the lodge concept and 8 of the residences/visitor accommodation were deferred to move forward, but he emphasised the Environment Court's decision that (in Mr Darby's words) "*there will remain capacity within the landscape to absorb further development".* Mr Darby noted that measures have been put in place, including a *"wide reaching and integrated Revegetation Strategy"*, and that the Darby/McRae partnership "*are spring boarding from the foundation* [they] *have created to establish this Zone"*[8].

40. Mr Darby described the amended Structure Plan as seeking to ensure "*a more logical and feasible* pattern *of development"* on the most suitable sites while ensuring there was not any different or adverse environmental effect *"while otherwise materially and significantly enhancing the quality of the environment and amenity, recreational, conservation and ecological values"*[9]*.* Specifically, Mr Darby noted the 8 additional home sites as having been identified in locations that can absorb change without generating adverse effects. The flexibility for refinements in the LS area were described as complementary to the camp ground and provision for visitor accommodation in the FH area. Mr Darby provided details of the substantial cost of developing the golf course and described the visitor accommodation provided for within the original proposal as being essential to fund its capital cost. He characterised the enlarged visitor accommodation/residential units as provided to support the viability of the zone.

41. Mr Darby also gave more general evidence putting the proposed zone in the context of a vision for Wanaka as an international tourism destination, citing the Lake Wanaka Tourism Strategy Plan goal of in excess of one million guest nights by 2022. He emphasised the role of the proposed golf course development as a critical component of the zone package, providing an attractive experience for international golf visitors, operating in conjunction with high quality courses at Millbrook, Jacks Point and the Hills.

[8] Darby Evidence in Chief at paragraph 15
[9] Ibid at paragraph 19

42. Mr Brett Thomson provided more detailed expert advice on planning of the development and design of the golf course. Mr Thomson has science and landscape architecture qualifications and specialises in golf course design.

43. Mr Thomson described the proposed Structure Plan as a logical development, including the framework established by the resource consent.

44. Mr Thomson summarised the proposed changes to the Structure Plan since the original submission was lodged, as discussed above, and took us through the planning for the golf course, residential area and LS area in greater detail. Mr Thomson noted that GBT had already sought and obtained variation to the resource consent to enable realignment of some golf holes and explained that the proposed zone would facilitate further adjustments. He explained to us the merits, from a golf course design point of view, of having additional land in the Fern Burn area available to him. As regards the expansion of the residential area, like Mr Darby, Mr Thomson emphasised the findings of the Environment Court regarding potential for further development than had been consented. His opinion was that the proposed 50 home sites met the ODP test of being 'not readily visible' from the Wanaka – Mt Aspiring Road.

45. Mr Thomson also provided evidence on growth rates achieved in a test of how fast kanuka might grow in the development area. He told us that after 12 years, kanuka on the test plots was over 4 metres tall. Lastly, Mr Thomson put the proposed changes to the LS area in context of growing demand for lake shore access and the need to future proof the facilities provided.

46. Mr Ken Gousmett gave expert evidence that there is adequate infrastructure planned and consented to serve the development proposed in the new Glendhu Station Zone, detailing his analysis in relation to the Three Waters, power supply and telecommunications.

47. Mr Andy Carr gave expert traffic engineering evidence on the proposal. Mr Carr explained the assumptions underlying his assessment of potential traffic effects associated with the proposed zone.

48. In response to a question we had, he described those assumptions as closer to a worst case than best case scenario. His conclusion was that the increased traffic volumes that might accompany development enabled by rezoning would not lead to any change in current levels of traffic service and that the injury accident rate on the Wanaka-Mt Aspiring Road will remain at below the typical rate for roads of its nature.

49. Dr Judith Roper-Lindsay provided expert ecological evidence on the extent to which the revegetation strategy prepared and certified as part of the consent condition requirements addresses potential effects on ecological values and management of adverse effects. Her view was that the site has low ecological values due to a history of farming and recreation land uses but that there are pockets of indigenous vegetation cover and small waterways which provide nodes suitable for revegetation, regeneration and enhancement of existing values. She noted that over 22,000 plants have already been planted on the consent area and intensive weed and pest control undertaken.

50. Dr Roper-Lindsay discussed specifically the consent conditions relating to staging of revegetation. Her opinion was that the biodiversity enhancement objectives sought by both the consent conditions and the revegetation strategy did not require that revegetation occur in stages linked to site development. She emphasised the long-term nature of those objectives

and provided the opinion that it is more important in the "*bigger picture"* that the planting is completed and healthy plant cover established than whether specific areas are planted at specific times related to the development.

51. However, when we discussed it with her, it appeared that the rationale for the staging requirements of the resource consents lay in the desire to manage visual effects rather than ecological effects. Accordingly, Ms Baker-Galloway suggested that we needed to talk to Ms Pfluger about that.

52. Dr Roper-Lindsay also addressed the implications of expansion of residential development provided for in the zone compared to the resource consent. She did not consider that the additional 8 home sites would necessitate any further mitigation or environmental compensation beyond that already provided for through the revegetation strategy approach, because the revegetation strategy had been drawn up to reflect the original project concept of 50 residential units. That had not been changed when the number of residential units was reduced, and the plans approved by the Court provided for mitigation planting in areas that did not have home sites.

53. Dr Roper-Lindsay also considered that there was benefit to biodiversity values in extending the revegetation strategy to the FH and C areas.

54. More generally, she reviewed the consistency of the Proposed Zone provisions with Chapter 33 of the PDP, concluding that they were consistent with the objectives of that Chapter as revised in the Council's right of reply.

55. Responding to the evidence of Mr Davis, Dr Roper-Lindsay discussed the focus of the existing certified revegetation strategy. While it is linked to the consented works, her opinion was that it would appropriately form the basis of a revegetation strategy under the zone rules. She noted that the additional FH and C activity areas have very low ecological values and the additional area of land proposed to be in the OS/F zone will be subject to district-wide vegetation clearance rules. She emphasised that where the zone rules and the consent conditions overlap, the focus of the revegetation strategy reflected the Environment Court's directions. She accepted that in some respects Mr Davis had raised valid points, but advised that these had now been addressed in the revised zone provisions.

56. We raised the potential loss of vegetation in the Fern Burn as a result of expansion of the golf course into that area. Dr Roper-Lindsay's view was that it was a highly modified waterway with poplars and crack willows, and no record of any ecological values. She didn't have any qualms about loss of vegetation in the area from an ecological perspective.

57. We also discussed with Dr Roper-Lindsay the test of the rate of kanuka growth. She observed that the growth was not as quick as required to meet some of the staging conditions. She felt that it was valuable because it demonstrated the need for irrigation to support revegetation.

58. Ms Pfluger provided expert landscape evidence for the submitter. She provided us with a background description of the site and its environs that we have drawn on in our description above, and analysed the changes provided for in the proposed zone compared to the consented activities. Ms Pfluger commented specifically on the removal of the area of OS/F in the centre of the R area (and its conversion to R), but without any identified house sites within it. In Ms Pfluger's view, this was a positive move because it removed the expectation that the area would be used for farming and enabled a focus on revegetation.

59. Ms Pfluger provided an assessment of natural character, landscape and visual amenity effects of each of the development components within the proposed zone. As regards the C activity area, she noted that development would be controlled by a spatial layout plan which would have the status of a restricted discretionary activity. She also pointed out proposed setbacks and maximum building heights as a means to avoid visual dominance from the Wanaka-Mt Aspiring Road. Ms Pfluger emphasised the level of activity at the existing campground, particularly in summer. She considered the flat terraces of the proposed C Area suitable due to the higher level of modification that has occurred on the more intensively farmed flats. As regards the natural character effects, Ms Pfluger noted that the extent of the activity area had been amended to exclude the Alpha Burn stream bed. She did not consider that there would be adverse natural character effects.

60. As regards to the extent of development in the C area, Ms Pfluger thought that small clusters of buildings would be acceptable but not rows of buildings. Likewise there should not be double-storey motel units next to the road although depending on their design, these could be acceptable further away from the road.

61. Ms Pfluger was unable to answer our questions about the relationship of the proposed campground to the existing camp ground, and whether they would be run as one operation. However, Ms Baker-Galloway said that GBT had not assumed that would be the case and that it may be that the McRae family would wish to run the additional camp facilities themselves.

62. As regards the FH area, Ms Pfluger identified the open terrace area on the eastern side of the Motatapu Road as visually more sensitive than that to the west where a mix of existing buildings are located among clusters and mature trees on a lower terrace. In her view, a clustered approach to development that is in character with the existing buildings would not create adverse landscape effects. She also emphasised the proposed rules directing large-scale buildings away from the eastern side of the FH area.

63. As regards the LS area, while the location of buildings is proposed to be shifted, Ms Pfluger noted that the size and scale of built development would remain similar. She observed that buildings in the western part of the proposed LS area would be visually more prominent than if constructed on the consented LS area but in her view, this would "*not necessarily translate into adverse visual effects"*. She emphasised that the consent concept had never revolved around hiding the components of the development from the lake and in her view, "*it would not be incongruent"* to see these core parts of the development more clearly from public viewpoints. Ms Pfluger did not consider that there would be any material change to visual and natural character effects from proposed changes to the G area. Discussing Dr Read's concern about golf course buildings in the expanded Fern Burn area, Ms Pfluger thought that the setback requirements in the propose zone rules would mean that they would not be in the Burn. She did not think that building in that area was practical in any event.

64. Ms Pfluger provided a more detailed analysis of the proposed additional residential sites, and expanded on that analysis in her supplementary evidence. In her view the 8 additional sites were suitable to accommodate dwellings without inappropriate adverse visual effects and in fact there would be no substantial difference in the visibility of those sites compared to the existing consented sites. She likewise concluded that the 8 additional home sites could be absorbed within the landscape without inappropriate adverse landscape, visual or amenity effects.

65. These conclusions were supported by a ZVI[10] analysis attached to Ms Pfluger's Supplementary Evidence.

66. Ms Pfluger confirmed that while she had modelled a maximum height of 3.8m above datum, she did not believe the additional 0.2m provided by the proposed zone rules[11] would be material given the distance from the potential viewing points. She considered that the colours and building materials used would be more important.

67. We discussed with Ms Pfluger whether the proposed design controls were sufficient to ensure a coherent and consistent design, particularly in the R area. She was of the view that the design would be consistent within each activity area, which was sufficient, because the areas are quite separated and cannot be viewed from one single viewing point.

68. Lastly, Ms Pfluger provided an assessment of cumulative effects of the proposed development within the Glendhu Station Zone. She noted that there would be cumulative effects within the lower Fern Burn visual catchment, but not all components would be perceived at the same time by travellers along the Wanaka-Mt Aspiring Road and the only viewpoints where all development aspects of the zone would be perceived in combination were high vantage points such as Roy's Peak. Ms Pfluger's conclusion was that the additional cumulative effect would not be significantly adverse.

69. As regards the cumulative effects of a 20% increase in the number of residential units in the R area, Ms Pfluger said that the reason for her view that they were acceptable was because the visual effect is so small.

70. Discussing the visibility of the site from elevated viewpoints like Roy's Peak further, Ms Pfluger told us that the proposed zone, once implemented, would make a difference to the camp area but that the differences in other parts of the zone would not be readily identifiable.

71. Discussing the effect of the proposed zone on the ONL values of the site and the wider area, Ms Pfluger was of the view that if a VAL area had been next to the Fern Burn Flats, the development area would probably have been excluded from the ONL on the basis of the level of modification. That is not the case, however, and hence, as above, she agreed with it remaining an ONL (as notified). Ms Pfluger did, however, note that the actual modification means that there may be a case to remove the ONL in future.

72. Lastly, Mr Chris Ferguson provided a comprehensive planning evidence that centred on the proposed zone provisions. The latter underwent a progressive change with multiple iterations as the hearing process proceeded, something that was the subject of particular criticism by counsel for Mr May. We will discuss particular elements of the proposed zone provisions below.

73. Mr Ferguson provided us with a detailed explanation as to why a zone was an appropriate mechanism to manage development of the site. He noted specifically that while the resource consent enables a broad range of interrelated activities, it was subject to a lapse date 10 years from commencement and in his words, *"the sequencing or staging of a consent has proven unrealistic from environmental, operational and economic perspectives"*[12].

[10] Zone of Visual Influence

[11] The proposed rules provide for residences meeting the prescribed standards, including a 4m height limit to be Controlled Activities

[12] Ferguson evidence in chief at 4.11

74. Mr Ferguson suggested to us that it is inevitable that a project of this scale would involve change and that most of the change authorised by variation to date has involved either neutral or negligible effect relative to the initial development. He emphasised, however, the administration and transaction costs of seeking variations under a Rural zoning, noting that as a relevant point in relation to the section 32 analysis.

75. More specifically, Mr Ferguson identified four primary objectives that provided the rationale for GBT introducing the Glendhu Station Zone. First, it is to integrate the activities and development already considered and approved by way of resource consent;

76. Secondly, in his view, the scale and complexity of the development and the long timeframe for its implementation and operation, lends itself to integration and to a District Plan framework rather than reliance on a resource consent and variations thereto "*to enable pragmatic and sustainable implementation".*

77. Thirdly, he noted that experience had shown that the consent conditions introduced a high level of complexity. In some cases, in his view, the layering of conditions is very onerous to achieve due to timing implications. He instanced growth rates of kanuka meaning that the consent conditions could delay commencement of Stage 3 construction for some ten years and suggested that Dr Roper-Lindsay's evidence indicated that this is not necessary for ecological outcomes to be achieved. Mr Ferguson described this as an area where the proposed zone would provide the opportunity to remove unnecessary complexity "*while still achieving the environmental outcomes intended by the Environment Court"*[13].

78. Fourthly, in Mr Ferguson's view, the development of the proposed zone "*has enabled clear* articulation *of the expectations for development in the wider Glendhu Station Zone in the future".* He described this as giving the wider community notice of the likely change that is proposed to occur with the FH and C area, and indeed the wider farm located within the OS/F area.

79. Mr Ferguson contrasted the ability of a special zone to set out these details clearly in a way that is not possible in a general Rural Zone that necessarily has to be very wide ranging. In Mr Ferguson's view, it is appropriate to take a more detailed approach where, such as is the case in relation to the Glendhu Station Zone, specific detailed knowledge is available.

80. Mr Ferguson specifically referenced the Glendhu/Cattle Flat resource study that Ms Pfluger had referred us to as providing a reference point for determining areas that might absorb change.

81. One aspect of GBT's case that we found difficult to follow was the way in which the very detailed consent conditions imposed by the Environment Court had been translated into zone provisions. In many cases, the essence of the obligation imposed by the consent conditions is contained within the plans that are referenced in the conditions. While the witnesses for GBT provided commentary on the areas where they had identified potentially material differences between the consent conditions and the zone provisions, we asked Mr Ferguson if he might provide us with a more comprehensive analysis in tabular form, so that we might follow how each condition had been reflected in the proposed zone provisions. This was provided along with the supplementary submissions of counsel for GBT. While counsel for Mr John May was somewhat critical of the commentary in that table, as containing a degree of advocacy that

[13] Ferguson Evidence in Chief at 6.1(c)

suggested grounds for caution, we have found the analysis useful in better understanding the rationale for what GBT is proposing and how it differs from the consent conditions.

### 2.6. Case for further submitters

82. We heard from three further submitters on the GBT submission in person. The most substantial case was presented for Mr John May[14]. Mr May's position was that Mr Darby had given evidence that GBT wanted no more than what the Environment Court had granted and that is precisely what he should get. Mr May's counsel, Mr Page, was critical of the GBT case as being non-specific as to the nature of the problem and poorly focussed on the best solution. Mr Page emphasised that the conditions now criticised by GBT for their inflexibility were proffered as part of an extensive hearing process during which iterative changes were made to the proposal until it tipped the balance in favour of consent being granted. Mr Page expressed the concern that the GBT submission is a trojan horse for a series of further applications to extend the proposed development well beyond what the Court granted.

83. As regards GBT's reliance on the 'existing environment', Mr Page argued that if the consents are indeed likely to be implemented in their current form, much of the argument for the zone provisions falls away and just as the adverse effects of the consented development are part of the existing environment, so too are the positive effects. Mr Page's submission was that GBT cannot rely again on the enhancements proposed in the resource consents to justify the zone provisions.

84. Mr Page cited the Court of Appeal's decision in *Man 0'War Station Limited v Auckland* Council[15] as authority for the proposition that positive effects cannot be used to offset what would otherwise be a failure to follow the direction in Section 6(b).

85. Mr Page was critical of the Proposed Zone provisions because of the alleged disconnection between the higher order provisions of the PDP in relation to ONLs and the proposed special zone policy framework. This is the subject of detailed planning evidence by Mr Graham Taylor, who gave expert evidence for Mr May. However, both Mr Page's comments and those in the evidence of Mr Taylor were in relation to an earlier iteration of the proposed zone provisions. As discussed in our Report 16, we gave Mr May leave to provide additional planning evidence and/or legal argument on the revised provisions and Mr Taylor submitted a supplementary brief of evidence that we will discuss shortly. Mr Page also provided legal comment that we have taken into account.

86. More generally, however, Mr Page submitted that there was no room for picking and choosing the consent conditions imposed by the Court. He argued that the Court's decision was predicated on the full suite of conditions ensuring that section 6(b) would be achieved.

87. The expert landscape evidence of Mr Andrew Craig, called in support of Mr May's further submission, emphasised that the proposed zone provisions (as then framed) failed to acknowledge the ONL status of the land affected by the Proposed Glendhu Station Zone and suggested that the additional building activity the zones would enable (specifically the 8 additional residential units and the proposed lodge) should be the subject of consideration by all of the relevant PDP provisions under a full discretionary activity framework. Mr Craig suggested to us that a high degree of control is necessary in order to appropriately manage potential adverse effects from development within the Proposed Zone.

[14] Further Submission 1094
[15] [2017 NZRMA 121]

88. Turning to the Supplementary Evidence of Mr Taylor, he accepted that the existing resource consents provide a consented baseline environment against which submissions might be assessed, but still considered that the revised proposals did not properly reflect the development approved by the Environment Court. Specifically, and in his words:
*"Whilst some areas have been improved, they still result in potential for an increased level of development under a policy framework that will be more enabling of development at the expense of outstanding landscape ("ONL") values, such that the overriding provisions of Section 6(b) if [sic] the RMA are not met"*[16].

89. Mr Taylor referred us to the provisions of the PDP relating to protection of ONLs and assessment of provisions affecting ONLs, comparing those provisions unfavourably with the suggested zone objective and policies.

90. Mr Taylor drew our attention to the fact that while the revised proposals have deleted provisions relating to the former lodge area, the policy and rule framework that would apply to visitor accommodation in that area would be, in his view, highly enabling and supportive of that occurring. As Mr Taylor observed, this arises because the area concerned is not the subject of covenant, but in his view, this reflected an absence of assessment or evidence before the Court rather than a considered view that no protection was required.

91. A regards the controls on residential buildings, Mr Taylor identified the potential for maximum heights to be increased as a restricted discretionary activity and also focussed on the design of the residential units, emphasising that they had shifted from a generic house design capable of being placed on each site with only minor modification to a position where a variety of larger buildings with different built form and materials will now occur. He described Ms Pfluger's visual assessment as being limited in scope because it only assessed visibility from locations on the Wanaka-Mt Aspiring Road. He considered the lake surface and foreshore areas and walking tracks as important additional viewpoints.

92. Mr Taylor referred us to passages from the Environment Court's decision on conditions recording that staging of development was deliberately related to the visibility of dwellings and kanuka growth rates. He considered the retention of staging requirements was essential to avoid adverse effects of development on the ONL and important in order to ensure that the provision of walking tracks and other public good elements be the subject of staging to ensure they occur.

93. Mr Taylor drew our attention also to the potential ambit of activities that might occur within the campground area due to the breadth of the definition of "*camping ground"* in the Camping Ground Regulations 1985.

94. Lastly, Mr Taylor expressed concern both about the number of activities falling within controlled activity rules under the proposed zone rules and the practicality of enforcing revegetation requirements into the future, once residential or visitor accommodation sites are established and on sold.

95. Turning to the other further submitters, Mr Haworth made submissions on behalf of UCES supporting the Council position that we will discuss in a moment. Mr Haworth specifically challenged the weight GBT sought to place on the Boffa Miskell landscape corridor study that he described as "*blatantly self-serving'.*

[16] G Taylor Supplementary Evidence at 9

96. Mr David Barton appeared and made submissions on behalf of Tui Advisers supporting UCES in its opposition to the submission. Mr Barton also advised that Mr Noel Williams was unable to the present but supported the position that Mr Barton had set out. NZ Fire Service did not appear in relation to its further submission.

## 2.7. Council Case

97. The Council case had to accommodate the progressive shift in relief sought by GBT. Its final position was captured by Mr Barr in his reply evidence. Mr Barr agreed with the concerns that Mr Taylor had raised in his supplementary evidence. He considered that the variance sought by the requested planning framework compared to the development enabled by the consents was excessive, the degree of adverse effects not appropriate and that the proposed zone would not give effect to the strategic chapters of the PDP or to section 6(b) of the Act.

98. As regards particular elements of the proposed zone, Mr Barr had a particular issue with the OS/F activity area. In Mr Barr's view, the areas of the OS/F activity area related to the development, being the trails and covenant areas, were not in themselves justification of the creation of a new zone and made up only a very small part of the activity area. He disagreed with Mr Ferguson's view that the OS/F rule and policy provisions would provide more protection to landscape value than the Rural Zone. Among other things, in Mr Barr's view, the policy framework is too enabling and fails to provide any assessment matters. As regards the alternative approach suggested by Mr Ferguson of reducing the OS/F area, Mr Barr did not see any reason why the entire OS/F activity area could not be replaced by the Rural Zone, with the covenant areas shown on the planning maps as BRAs. He also had an issue with the suggested approach of making the formation of the trails standards. Rather, Mr Barr suggested that the trails might be retained in the Structure Plan, but be required to be implemented as part of the matters of discretion associated with the land uses forming part of the development. Mr Barr expressed a concern also about the zone provisions allowing for two residential units in covenant areas referenced only by the legal description.

99. Addressing the FH area, Mr Barr recommended that this required a more comprehensive framework including a spatial layout plan and that both buildings and anticipated activities should have restricted discretionary activity status.

100. Mr Barr considered that the provisions of the Camp Ground area suggested by Mr Ferguson could be workable provided that policy framework is strengthened to manage section 6(b) matters. Mr Barr also raised issues regarding the structure and administration of the zone provisions. We had queried Mr Ferguson whether the zone might more appropriately be provided for as a subzone within the Rural Zone. Mr Barr identified benefits from that approach, because it would incorporate the assessment matters in Part 21.7 and better provide for activities such as informal airports that are not mentioned within the Zone provisions. However, overall, Mr Barr considered that this would be a flawed approach setting a poor precedent for further rezoning requests in the rural environment. As he observed, this is not the first resource consent in the District to offer compensatory components that have resulted in complex resource consent conditions. He also noted that these can be made even more complex if the consent holder seeks departures from them.

101. Mr Barr also drew attention to the result of using the resource consent as a spring board for a substitute zone being to replace the underlying presumption and level of protection in the existing provisions. Overall, Mr Barr opposed the rezoning request.

102. Dr Read also provided evidence in reply, commenting specifically on the additional visual assessment evidence provided by Ms Pfluger. Dr Read drew our attention to the fact that the ZVI analysis undertaken by Ms Pfluger incorporated vegetation, in her view contrary to best practice guideline for visual assessment promoted by the New Zealand Institute of Landscape Architects. Dr Read also noted that the assessments had been made based on the footprints of the consented dwellings, whereas each lot owner would be able to design their own dwelling if the zone provisions were approved. Dr Read considered that that would represent a significant departure from the consented development with an adverse effect on the landscape values of the area.

103. Dr Read also identified issues with the potential for the heights of residential dwellings to exceed the 3.8 metres assessed by Ms Pfluger, particularly if chimneys were brought into the equation.

104. In her earlier evidence in rebuttal, Dr Read described a number of the suggested changes in the Structure Plan, compared with that tabled with the original submission, as being positive – in particular the proposed shift in the LS activity area along the lake shore, deletion of the proposed residential pod located north of the Wanaka – Mt Aspiring Road and amalgamation of the four remaining residential pods into the R area and absorption of the OS/F activity area previously located between them.

105. Dr Read expressed concern about the expansion of the G area in the Fern Burn area, but when we discussed it with her, she confirmed that her issue was with the potential for buildings to be constructed in that area as result of the change in activity area classification. She did not have the same concerns about the area being used by golf players.

106. Like Mr Barr, Dr Read thought that the balance of Glendhu Station (not forming part of the development) was more appropriately managed by the Rural Zone provisions.

## 2.8. Discussion of Planning Framework

107. Because GBT proposed an entirely new zone in substitution of the existing Rural Zone, the Plan provisions of principal relevance to the rezoning issue before us were those of the strategic chapters summarised in our Report 16.

108. In particular, because the site is now accepted to form part of an ONL, recommended objective 3.2.5.1 is of particular importance, along with the accompanying Policy 3.3.30.

109. The nature of the development enabled by the proposed zone provisions also brings recommended Objective 3.2.1.1 into play – requiring that the zone provisions be tested as to whether they would ensure well designed and appropriately located visitor industry facilities and services.

110. Recommended Policy 3.3.21 is also relevant and indicates a need to test whether landscape quality, character and visual amenity values are protected, maintained or enhanced.

111. This is similarly a diversification of land use in rural areas beyond traditional activities and so, in terms of recommended objective 3.2.1.8, we have to consider whether the character of the rural landscape, significant nature conservation values and Ngai Tahu values, interests and customary resources are maintained.

112. One element of the Environment Court's consideration of the previous resource consent applications lay in its status as "*urban development",* as defined in the ODP. We do not consider that the activities provided in the proposed zone meet the revised definition recommended for "*urban development"* and therefore we have not considered the consistency or otherwise of the proposed provisions with the strategic objectives related to urban development.

113. Recommended Objective 3.2.4.5 related to maintenance and enhancement of public access to the natural environment is, however, relevant. Likewise, recommended Policy 3.3.28 would suggest that we should seek opportunities to provide public access to the natural environment as part of any rezoning proposal.

114. Recommended Policy 3.3.25 would also suggest a need to carefully consider whether new subdivision and development for the purposes of rural living facilitated by the zone provisions would alter the character of the area from being 'rural'.

115. Turning to recommended Chapter 6, Policy 6.3.8 is of relevance in terms of encouragement for indigenous biodiversity protection and regeneration.

116. Recommended Policy 6.3.11 emphasises that development within an ONL needs to be an exceptional case, where the landscape can absorb the change and where buildings and structures and associated roading will be reasonably difficult to see from beyond the boundary of the site.

117. Sitting behind the strategic provisions, of course, is Part 2 of the Act. In this case Section 6(b) of the Act is of particular relevance.

## 3. ISSUES

118. We have identified the following issues that we need to address in order to provide a recommendation on the GBT submission:
    a. What is the relevance of the existing resource consent to the rezoning that GBT requests?
    b. Does the shift in what is proposed create scope issues?
    c. What is the relevance of the covenants registered on the relevant titles?
    d. What areas and activities should any new zone cover?
    e. What is the most appropriate zoning for the land the subject of submission?

## 4. DISCUSSION OF ISSUES AND CONCLUSIONS

### 4.1. Existing Consent

119. As already noted, both the Council (through its counsel) and Mr May (through Mr Taylor) accepted that the resource consent that had been granted for the Parkins Bay Development was both likely to be exercised and part of the existing environment. We told Ms Baker-Galloway that she should not assume that that was also the Hearing Panel's position.

120. As the High Court has pointed out[17] the term 'existing environment' is something of a misnomer. It arises in the context of resource consents because section 104(1)(a) of the Act requires consent authorities to have regard to any actual and potential effects on the environment of allowing the activities.

[17] *Royal Forest and Bird Protection Society of NZ Inc. v Buller District Council* [2013] NZHC 1324 at [13]-[14]

121. To answer that question, the consent authority must necessarily determine what makes up the "*environment*" for this purpose, so as to provide a reference point against which one can identify actual or potential effects[18].

122. Normally the reference point is the environment at the date of decision, but that is not an invariable position. The Court of Appeal has told us[19] that in some cases it is legitimate to consider the future state of the environment. The Court of Appeal held that one of those cases is when resource consents have been granted at the time a particular application is considered "*where it appears likely that those resource consents will be implemented"*[20].

123. The significance of deeming particular resource consents to form part of the 'existing environment' is that the effects those resource consents might have on the environment are thereupon taken to form part of the environment, restricting the inquiry to the incremental changes from that position. Usually, but not invariably, that will ease the path for the subsequent resource consent applicant.

124. That is not, however, the exercise we are engaged in. We are recommending whether GBT's submissions seeking to rezone its land should be granted. The High Court has held that in such a case, we are not obliged to consider the environment by reference to the tests contained in the *Hawthorn* decision[21].

125. The High Court's decision suggests that while we are not bound to do so, we nevertheless have a discretion to take account of the existing resource consent. We therefore need to determine whether or not we should exercise that discretion.

126. That does not mean we have a free choice. Any discretion of this kind needs to be exercised (or not) on a principled basis.

127. Going back to the purpose of the 'existing environment' Fogarty J described the Court of Appeal's *Hawthorn* decision as adopting a 'real world' approach to the issues before it in the subsequent *Shotover Park* decision we have noted. That would suggest that, if indeed the existing consent is likely to be exercised, we should take account of that, and the inevitable changes to the environment at Parkins Bay that will result, when recommending the appropriate planning framework for the area in the future.

128. We had two fundamental problems with application of that principle in practice. The first is that the entire case for GBT was premised on the existing consent not providing a workable basis on which to undertake the proposed development.

129. Ms Baker-Galloway implied that the consent conditions were impractical. Mr Ferguson emphasised their complexity and, how onerous they have proven in practice[22]. Elsewhere, Mr Ferguson stated that the staging provisions of the consent have "*proven unrealistic from environmental, operational and economic perspectives"*.[23]

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[18] As noted in *Alexandra District Flood Action Society Inc v Otago Regional Council* C102/2005 at [20] effects are effects on someone or something.
[19] In *QLDC v Hawthorn Estate Limited* CA45/05
[20] Ibid at [84]
[21] *Shotover Park Limited and Ors v QLDC* [2013] NZHC1712
[22] Ferguson evidence in chief at 6.1
[23] Ferguson Evidence in Chief at 4.11

130. Clearly, GBT has undertaken a lot of work since the consent was granted. As already noted, Dr Roper-Lindsay told us that over 22,000 plants have already been planted. Easements for public trails have been registered on the respective titles. Physical works have even commenced with formation of building platforms for some of the residential dwellings. Lastly, we are aware that a project like this will involve substantial behind the scenes design work before full financial commitments can be made to it.

131. We discussed the implications of the steps that had already been taken with Ms Baker-Galloway in relation to the concern expressed by Mr Ferguson that the consent might lapse before it was given effect to. Our reaction for that concern was that given the guidance provided in *Biodiversity Defence Society Inc v Solid Energy New Zealand Limited*[24], there had to be a good argument that if the resource consent had not already been given effect for the purposes of section 125 of the Act, it must be close to that point. Ms Baker-Galloway agreed with that observation.

132. However, it appeared clear to us that while not having finalised the layout of its golf course, GBT was moving forward with a different design that would utilise different land from that shown on the current resource consent condition plans. Mr Darby described that as a process of optimisation. Mr Thomson, who is the golf course designer, described it to us as a process of trying to save costs while optimising the golf course experience, which puts a slightly different perspective on the process.

133. Ms Baker-Galloway told us that if GBT's submissions were unsuccessful, it would proceed to implement the resource consents as granted. That was not, however, the message we took from GBT's evidence. Mr Darby summarised the position as follows:
*"Commencing construction is imminent on the Site; however this is a considerable financial investment which relies on the enduring certainty of the consents granted in a zoning framework as opposed to a myriad of complex and cross-referencing resource consents."*[25]

134. We took from that statement that the finances of the project were delicately poised and that no final commitment to proceed had been made[26].

135. The second principal reason that we had for having doubts about the appropriateness of applying an 'existing environment' analysis to the zoning questions we had to resolve in our own minds was the extent to which the ground seemed to be shifting before our eyes. This was exemplified by the lodge component. This was in the original proposal the subject of resource consent application, but not pursued before the Environment Court. It was in the original Structure Plan contained in GBT's submission, but deleted again in the version tabled with Mr Ferguson's Evidence in Chief. We think there were some grounds for the concern expressed by the representatives of Mr May that were a special zone to be put in place, the lodge proposal might reappear, yet again, taking advantage of the suggested policy and rule framework for enabling departures from the revised project concept. While we will discuss this in greater detail shortly, for present purposes, we note merely that these provisions appeared to have an enabling character that was inconsistent with the location of the site within an ONL.

[24] [2013] NZ EnvC195: affirmed [2013] NZHC 3283
[25] Darby summary statement at paragraph 7
[26] Mr Darby also told us in response to a question that the 8 additional residences provided for in the Special Zone were a necessary component in order to complete the development

136. In the *Hawthorn* decision, the Court of Appeal discussed the concept of "*environmental creep*". It described it as follows:

> *"This is the possibility that someone who has obtained one resource consent might seek a further resource consent in respect of the same site, but for a more intensive activity"*[27].

137. The Court's response was as follows:

> *"If it appeared the developer was simply seeking successively more intensive resource consents for the same site there would inevitably come a point when a particular proposal was properly to be viewed as replacing previous proposals. That would have the consequence that all of the adverse effects of the later proposal should be taken into* account*, with no "discount*" *given for consents previously granted."*[28]

138. While the Court of Appeal was describing successive resource consent applications, we are concerned that the GBT submission may be an example of "*environmental creep*".

139. Some of the language used by Mr Darby also tends to support this description of the process to date – as already noted, he suggested, for instance, that GBT was "*spring boarding from the foundation we have created to establish this zone"*[29].

140. Part of the reason for the matter being an issue was because of a lack of clarity, in our minds at least, as to the relationship between the existing consent and the Proposed Zone provisions, should they be confirmed. Ms Baker-Galloway described the position as being one where GBT was seeking an alternative route to proceed. This would occur in practice either through variation of the existing consents (considered against the objectives and policies of the proposed zone) or through additional consents. She emphasised to us that there are no permitted activity rules in the proposed zone; GBT was seeking an alternative consenting path. We have no difficulty with GBT having an alternative consenting path available to it, but we do not consider that it should be able to rely on the aspects of the aspects of the existing consent that suit it when doing so – a process that in other contexts might be described as *"cherry-picking"*.

141. In summary, we find that this is not an appropriate case to apply the "*existing environment*" in its strict sense, as described above. Rather, we consider that we need to look at the development enabled by the Proposed Zone provisions in the round, but taking into account the findings of the Environment Court as to where the balance of adverse and positive effects lay in relation to the project concept that was before it, given the conditions that it determined to impose.

142. In the ultimate, that may not be a hugely different exercise. The significant point is that we do not consider that our focus should be solely on the areas of difference between what GBT now proposes, compared to what was consented.

### 4.2. Scope Issues:

143. One of the matters that has to be considered when a proposal brought to hearing differs materially from what was described in the original submission is whether the varied proposal

[27] Hawthorn at [77]
[28] Ibid at [79]
[29] Darby Evidence in Chief at paragraph 15

is still within the scope of the submission. We discussed this issue at length in the context of the Allenby submission[30].

144. The evidence we heard was that the suggested changes were largely positive. Nevertheless, we have a degree of unease about some of the changes having relatively significant implications. We have in mind, in particular, the proposed shift in the location of the LS area given its prominent location on the lakefront and Ms Pfluger's evidence that the development would be more prominent as a result of locating it entirely on the lower terrace on the lake front. Her use of a double negative ("*not incongruent*") to describe it, also suggested room for concern regarding potential adverse effects, but we were reassured by Dr Read's view that this would be a positive change from a landscape and visual amenity perspective.

145. At one level, GBT was just refining its proposed structure plan. However, sitting behind the structure plan are a series of plan provisions. In effect, each activity area constitutes its own sub-zone, with separate rules and performance standards. Having said that, none of the parties before us seemed to have shared our unease, and given we did not take the opportunity to raise it with Ms Baker-Galloway, we do not think it appropriate to rest our decision on it.

### 4.3. Relevance of Covenants

146. When Ms Baker-Galloway initially appeared before us, we inquired about the implications of altering the boundaries of some of the proposed activity areas given that the covenants that had been imposed by the Environment Court, and duly registered on the relevant titles, reflected the structure plan as put before the Environment Court. Ms Baker-Galloway's initial reaction was that GBT had considered the point and did not think it was an issue. However, when she reappeared with the balance of GBT's witnesses, she told us that there was indeed an issue, but that, to the extent that amendments to the covenants were required, GBT would pursue that as a separate process. She noted that the form of the covenants is that any amendment requires the Council's consent, but such consent is not to be unreasonably withheld.

147. Mr Page for John May, presented a more wide-ranging argument, submitting that to the extent that the Environment Court had accepted exclusions in the covenants to permit particular developments, if the subject of subsequent consent, it was clearly envisaging that such consents would be considered against the background of the rigorous assessment provisions of the ODP Rural General Zone. We doubt that that is correct as a matter of fact. The Court would, of course, be well aware that the District Plan is reviewed from time to time and that resource consents for additional activities not contained within the initial Parkins Bay consent would fall to be considered under the Plan as it stands at the time. The Court would, however, be entitled to expect that any Plan provisions would recognise and provide for the protection of ONLs, in line with section 6(b) of the Act.

148. Stepping back, the role of covenants in a consent such as this is to provide an additional layer of regulation that is specific to the land over which it is registered and transparent to subsequent owners of that land (or at least more transparent than a complex set of resource consent conditions would be). Because the mechanism for amendment of the covenants is a private law instrument conferring a discretion on the Council, it is inappropriate that we express a view on the future decisions the Council may make if GBT request its consent pursuant to that instrument. However, we note that the provision limiting the Council's jurisdiction to withhold consent relates only to a situation where the proposed variation or

[30] Refer Report 16.14

surrender does not affect the landowner's ability to exercise its rights under the land use consent – defined to mean the land use consent granted by the Environment Court and any variations thereof – and so the Council's jurisdiction may not be as constrained as GBT appears to believe.

149. We will nevertheless proceed on the assumption that the need to obtain the Council's approval will not be an insuperable obstacle, should we recommend the zone provisions sought by GBT, or some variation thereof.

### 4.4. The area of land to be covered by the Special Zone

150. The key point for consideration under this heading is whether defining the OS/F area necessary or desirable. Mr Barr had a clear view that the entire OS/F activity areas should be left zoned Rural.

151. Mr Ferguson explained that the rationale for inclusion of the OS/F area was that while the zone provisions provide for very little development within it, this is the land that provides the bulk of the package of positive environmental benefits that are integral to the development in other areas. As Mr Ferguson explained, these include the ecological revegetation and regeneration areas, and public access trails in the large area of covenanted open space required under the resource consent[31].

152. As already noted, Mr Ferguson accepted that there was merit in reducing the size of the OS/F Area, but he continued to recommend that it apply to the covenant protection areas immediately to the south of the principal development areas. This amended area would include what Mr Ferguson described as the most accessible public access trails close to the development area along with the main revegetation areas.

153. It is fair to say that we had difficulty following Mr Ferguson's logic. We discussed with him at some length the approach in his proposed zone provisions of providing for public access trails as standards within the zone rules. It seemed to us that this highlighted a critical distinction between resource consent conditions, that might require positive action, and zone rules which necessarily enable activities, subject to compliance with conditions and standards. It seemed to us that Mr Barr had a point and rather than there being stand-alone rules associated with formation of trails, they needed to be covered within the rules providing for the development activities they were designed to compensate for.

154. Similarly, we agree with Mr Barr that the covenant areas could be appropriately protected with a BRA on the planning maps, were we to recommend acceptance of the balance of the zone.

155. We also agree with Mr Barr that, to the extent that activities are provided for within the OS/F Area, the policy framework of the suggested zone is too enabling and fails to provide for appropriate assessment in line with the classification of the areas concerned as part of the ONL.

156. Last but not least, were the entire OS/F area to remain as part of the Rural Zone, this would overcome the concern expressed on behalf of John May that the lodge concept might reappear in the fullness of time, supported by an enabling policy framework.

[31] Ferguson supplementary evidence at

157. In summary, we find that the Rural Zone is the most appropriate zone for the area identified by GBT as its OS/F activity area.

### 4.5. Appropriate Zoning for Balance of Development Area

158. Ms Baker-Galloway (in her submissions) and Mr Darby and Mr Thomson, in their evidence, emphasised to us that the Environment Court had found, after a lengthy consent process, the development as then proposed, to be consistent with sustainable management. Mr Thomson referred us to a passage in the Court's second interim decision indicating to his mind, the scope for additional development above and beyond what had been consented.

159. Looking in greater detail at the Court's decisions, the first Environment Court interim decision[32] is notable in the following respects:

a. The Court made a number of comments throughout its decision indicating that it was impressed by the work that had gone into designing the proposal before it. At [276], it described the proposal as "*highly laudable"*[33].

b. At [150] the Court expressed the view that Glendhu Station had not reached a threshold for development, "*although clearly that part of it to the north of Mt Aspiring Road is very close to a threshold given its flatter nature and visibility from the road and the lake"*.

c. At [152], the Court expressed the view that the proposal had not overstepped the mark in relation to the golf course. Later in the decision[34]the Court expressed the view that the golf course would not make any real change to the fundamental character of the landscape.

d. Also at [152], the Court said:

*"In respect of the 42 houses the proposal comes close to exceeding a threshold, but may not if an appropriate set of conditions and covenants is imposed".*
This was the passage Mr Thomson relied on and we will return to it.

e. Commenting on the proposed houses as part of its discussion of section 6(b) of the Act the Court said:

*"As for the protection of the outstanding natural landscape in which the site is set, we consider that, taking into account the careful siting of the houses and the way in which they are designed to become part of the landscape, the revegetation plans, and the morainic setting, the housing component of the proposal will not harm the landscape to any significant extent…*

*The adverse effects on landscape values which cannot be mitigated so readily are the dynamic and changing effects of the occupants and visitors of 42 houses going about their lives and of the golfers and watches [sic] on the golf course and of their attendance, cars and buggies. We accept Mr Kruger's evidence, that even with the mitigation proposed in the form of mounding and planting, they will have some adverse effects on the outstanding natural landscape of which the site in Parkins Bay are part. Whether the proposal is acceptable under the objectives and policies will be a matter of the environmental compensation off the site (but within Glendhu Station or the margins of adjacent streams or Lake Wanaka)*[35].

[32] [2010] NZ EnvC432
[33] See also [279]
[34] At [226]
[35] Paragraph [226]-[227]

f. Considering the proposed houses in the context of cumulative effects, the Court commented:

*"After considering all the relevant matters we find that the density of development – and in particular the proposed 42 houses – has not reached the point where the benefits of further planting and building will be outweighed by the over domestication of the landscape provided there is mitigation and environmental compensation by, for example, buffering along the eastern edge of the site[36]".*

The Court cited 6 factors for having come to that view, of which the design of the proposed houses, especially the roofs and curtilage areas, was the first listed.

g. Ultimately[37], the Court expressed concerns about 3 areas which meant that it was not satisfied that the proposal would achieve the purpose of the Act. Those three areas were stated to be:
   i. The *landscape impact to the development, given its comparatively large-scale (42 houses) for a rural area;*

   ii. *Concerns about accumulative effects of possible further development especially east of the* Fern *Burn – both on and beyond the boundary of Glendhu Station;*
   *iii. The lack of* attention *to the natural environment of Glendhu Station and elsewhere around the site (as opposed to the careful design that has been lavished on the site itself)."*
h. The Court gave leave for the applicant to present further evidence that might satisfy it that it was nevertheless appropriate to grant consent.

160. We interpret the Court's first interim decision as a clear signal to the applicant that it had a consentable project, but only if it proffered more environmental compensation and addressed a number of loose ends that the Court had identified. The Court specifically stated that it did not think much more could be done to mitigate the visual impact of the development on the landscape[38].

161. Against that background, the Court's second interim decision[39] might be noted on the following points:
   a. The Court emphasised that except where it had granted leave, the conclusions in its first decision were not open for debate.
   b. The Court emphasised that it applied a test of environmental compensation based on whether it is "*logically connected to the development",* remedies problems on the golf course site and adjacent land, is close to the site and is likely to be effective[40].
   c. The submissions for UCES were described as having failed "*to acknowledge the Court's reliance on the special features of the residences' design (in particular that the roofs will be flat and vegetated) or the complex topography in which they will be set" [41].*

[36] Paragraph [262]
[37] At paragraph [279]
[38] See paragraph [279]
[39] [2012] NZEnvC 43
[40] Ibid at [11]
[41] Ibid at [14]

d. The Court listed a combination of straight mitigation and environmental compensation under 14 heads (a)-(n) that it described as providing "*for some solid environmental compensation"*[42].
e. Mr Darby was noted as stating that the proposed staging of the development "*is* deliberately *related to the visibility of the dwellings and kanuka growth rates"*[43]
f. Considering the revised proposal against the different aspects of section 5, the Court noted again the small footprint of the added residences and the fact that their roofs would be covered in native grasses[44].
g. The Court found that the proposed buildings, especially those on the lakeshore, together with the 42 residences, would reduce the naturalness of part of the ONL but that the adverse effects would be minor because "*of the unique and complex landscape in which the proposal is set and its very careful and imaginative design*[45].
h. The Court observed that the applicant had not been as forthcoming as desirable "*to meet the* spirit *of the District Plan, and particularly Part 2 of the RMA"*, but it considered that the matters volunteered by the applicant were "*essential"*[46].

162. Ultimately the Court found that "*when the environmental compensation, as amended by this* decision*, is added to the scales, … it brings them down on the side of the proposal. We judge that the proposal as now put forward, subject to the minor changes suggested by this decision will be sustainable management of resources under the RMA."*

163. The overwhelming impression created in our minds by the Court's decision is that, having been put on notice by the Court that it needed to be more forthcoming, the applicant provided sufficient environmental compensation to satisfy the Court that the overall proposal was consistent with the purpose of the Act, but not by much.

164. To the extent that the witnesses for GBT, and its counsel, Ms Baker-Galloway suggested that the Court's reasoning provided a basis for concluding that there was room to materially increase the scale of the development or to reduce the protections applying to it, we do not think that the passages we have noted above support that contention. As regards the specific passage from paragraph [152] of the first decision quoted above and relied upon by Mr Thomson, we read the Court as finding that 42 houses came close to exceeding a threshold, but might not exceed the threshold if an appropriate set of conditions and covenants were imposed. That does not suggest to us it supports a conclusion that increasing a number of houses by nearly 20% (from 42 to 50) would not exceed an environmental threshold.

165. As regards the specific issue of staging, which has obviously been problematic for the applicant, the Court's decision makes clear that Mr Darby relied upon that as mitigation for the short term visual effects of house construction. We asked Mr Darby how he could reconcile the position now being advanced with the evidence he is recorded as having given to the Court and did not get a clear answer. Mr Darby told us that GBT was not trying to change the order of events, but that the staging plan has many elements that are not material to the project. The trouble we had with that response was that the evidence for GBT was that it was the length of time kanuka would take to grow to a sufficient height to screen the house sites that was the problem, and this is the aspect that Mr Darby is recorded as specifically relying on staging conditions to address.

[42] Ibid at [17]
[43] Ibid at [29]
[44] Ibid at [65]
[45] Ibid at [66]
[46] Ibid at [77]

166. Ms Baker-Galloway told us that Ms Pfluger would explain to us why the staging conditions were unnecessary, but we do not think she did so. In particular, Ms Pfluger's detailed analysis of visibility related only to the proposed 8 additional homesites. In addition, as Dr Read noted in her reply evidence, that analysis suggested that even on the assumptions used for those 8 sites as to height and location (which she critiqued) vegetation needed to reach 2 metres in height to provide the requisite screening.

167. More generally, we interpreted the staging requirements in the consent conditions as seeking to ensure the development proceeded as an integrated whole, and in particular, precluded development of the residential elements without the golf course and other related components. We asked Mr Darby about that, and again did not get a clear answer.

168. We agree that there may be elements of the staging conditions where the order in which aspects of the development occurs is not particularly material, but the GBT approach seemed to be that the 'baby' should be thrown out along with the 'bathwater'. We were not persuaded that this was either necessary or desirable.

169. Another aspect of the Court's decision that we found troubling is that, as the passages noted above demonstrate, the Court clearly placed weight on the design of the residences (in particular of the grassed roofs). GBT now proposes a much broader discretion over their design, albeit within specified parameters. This was a point of concern to Dr Read, whereas Ms Pfluger and Mr Thomson felt that so long as designs were homogenous within different areas, that was sufficient. Clearly, that is a material shift from the position the Court relied upon.

170. We also had a consistent concern with the activity status that Mr Ferguson recommended for departures from the position GBT described to us (and which its witnesses assessed). So, for instance, while it was stated that there shall be no more than 50 residential or visitor accommodation units within Area R, non-compliance with that rule was suggested to be discretionary. Similarly, the size and curtilage of each home site were suggested to be discretionary. Building heights for the residences were fixed at a maximum of 4 metres, but exceedances were suggested to be restricted discretionary. Only above 6 metres was it suggested that exceedances would be non-complying.

171. Use of restricted discretionary and full discretionary status for exceedances might have been adequate if the objectives and policies of the proposed zone were strongly protective of ONL values in particular, and of other environmental values. However, this was not the case.

172. The initial version of the proposed special zone provisions was entirely focussed on enabling the proposed development to proceed. The zone purpose stated to be "*to provide for residential and visitor accommodation within a rural setting, high standard of built amenity, an 18 hole championship golf course, other recreation and tourist amenities and to provide environmental benefits through the provision of public access, provision of open space and nature conservation enhancements".*

173. The proposed objective did not mention the ONL and the suggested policies indicated that landscape values would be taken into account in the spatial layout of development and that outside specific landscape protection areas and the OS/F area, buildings would be required to mitigate effects on such values.

174. Unsurprisingly, Mr Barr was sharply critical of the proposed zone provisions in his section 42A report.

175. Mr Ferguson endeavoured to respond to those criticisms, tabling a revised set of provisions for the proposed special zone, and then producing a third iteration of the zone provisions with his supplementary statement of evidence.

176. We had a lengthy discussion with Mr Ferguson regarding the detail of the final iteration of his zone provisions, seeking to identify how the residual flaws that we still saw in the drafting might appropriately be addressed.

177. While Mr Ferguson was nothing if not constructive in responding to our queries and suggestions, we have determined that the problem he faced was that the entire exercise was problematic, because he was seeking to engraft appropriate recognition of environmental values, particularly the values of the ONL, into a document that started life with a different purpose – namely to enable a development.

178. The clearest example of that is that Mr Ferguson proposed reliance on the Glendhu/Cattle Flat resource study produced by Ms Pfluger as providing the basis for identifying areas with the capacity to absorb change. We have already noted Mr Haworth's forthright comments on that document. While we do not necessarily accept his criticism of it, we consider that if that study was to have a pivotal role in determining the appropriateness of development on the site under the provisions of the special zone, the conclusions it reached needed to be the subject to much greater analysis and support from the appropriate expert witnesses, whereas Ms Pfluger produced it essentially only as background to her evidence.

179. Moreover, as regards the critical point of identification of areas able to absorb change, Figure 11 of the resource study identified virtually all of the inner development area (once one excludes the OS/F areas), as having either moderate or varied ability to absorb change. That is not particularly helpful, because it provides no indication as how the proposed policies taking account of that would operate to concentrate development in suitable areas, and avoid less suitable areas. In addition, it does not appear to be consistent with the concern the Court had with potential cumulative effects from development east of the Fern Burn.

180. Clearly there were aspects of the proposed revised development (compared with the consent), that we might well have supported. Dr Read described the suggested changes to the development at the lakeshore as being positive. Given the Court's conclusions, we do not think that the suggested changes to the area occupied by the golf course were material, provided that buildings were excluded from the expanded G area where it was proposed to cross the Fern Burn. Likewise, the amalgamation and greater specificity within the R area.

181. We are somewhat more equivocal regarding the proposed increase in numbers of residences. At one level, Ms Pfluger's evidence of the lack of visual impact they would have given the distance from any relevant viewing point was convincing. However, given the emphasis given by the Court to their design, we were troubled by the proposed shift away from a uniform design with grass covered roofs. Perhaps more importantly, given the Court's emphasis on the issue posed by those houses not being their effect on the landscape, but rather the increase in human activity in the area, this associated effect was not adequately addressed in our view. Nor, for some time, did GBT seem to recognise that having convinced the Court that the 42 residences the subject of application were acceptable by virtue of the scale of environmental compensation, if the number of residences increased, so too needed the

environmental compensation to increase. Ms Pfluger and Dr Roper-Lindsay addressed the issue solely in terms of how much planting was required to directly mitigate the effects of development, rather than addressing these broader issues.

182. Ultimately, however, Ms Baker-Galloway advised us on behalf of GBT that it would 'scale-up' the replanting and regeneration proportionately with the increase in number of houses.

183. This brings us to another point that was the subject of debate during the hearing. Ms Baker-Galloway argued, based on *Infinity Group v QLDC*[47] that positive effects could be taken into account. The argument of Mr Page, for John May, was that the positive effects already had been taken into account in the consent and that it was inconsistent with an existing environment position to rely on those same positive effects again. We have addressed the more general question in part in our report in relation to the Allenby submission[48]. It follows from our conclusion there that the scope to consider environmental compensation perhaps is not as broad as it was when the Environment Court determined the resource consents, but arguably, given the Court's findings that effects on the ONL were minor, the Court might reach the same result today. On the narrower point, our having concluded that we will not apply a strict 'existing environment' approach, the point Mr Page was making rather falls away.

184. However, we think that the underlying basis for the Court's consent decision (that the benefits of the development exceeded the adverse effects once the proffered environmental compensation was taken into account) remains relevant when we come to consider those aspects where the proposed zone clearly provides for activities beyond what was consented. We have addressed the increase in house numbers, and the suggestion that the replanting and regeneration areas be increased proportionately.

185. GBT, however, suggested entirely new activities occurring in the FH and C areas for which no additional environmental compensation was proffered as far as we could see.

186. Given the concern expressed by the Environment Court regarding cumulative effects of development east of the Fern Burn, this was an additional area of concern for us. Dr Read's initial view was that the proposed camp ground was acceptable on landscape grounds. However, upon inquiry, she was assuming a camp ground of the same ilk as the Council camping ground on the lakeside of the road. Ms Baker-Galloway submitted was that the nature of activities that might occur was described clearly by the definition of 'camping ground' under relevant regulations. However, having consulted that definition, other than precluding permanent occupation, there are few if any other constraints. As Mr Page somewhat acerbically (but in our view accurately) commented, it would permit hotel buildings to be constructed as a controlled activity.

187. More generally, we think that there was a measure of justification in counsel for Mr May's criticism of the desire on GBT's part for greater flexibility than is provided in the consent conditions. As he observed, Mr Darby is a very experienced developer with a strong track record in projects of the type now proposed for Parkins Bay. We agree with Mr Page that it is hard to believe that Mr Darby did not understand the implications of the tightly defined conditions which were under discussion as part of the resource consent appeal process. In our view, if he did not consider that those conditions enabled the proposed development to proceed, it was incumbent on him to tell the Court that, rather than accept them and then seek to progressively 'shift the goalposts'.

[47] C010/2005
[48] Refer Report 16.14

188. Most concerning to us, when we discussed with Ms Pfluger the implications of the entire integrated development envisaged by the special zone for the ONL, and asked her whether there would be a case to uplift the ONL notation in future, she replied in the affirmative. We regard that as the ultimate litmus test for the acceptability, or otherwise, of the proposed special zone. Ms Pfluger's answer suggested to us that it would fail the test.

189. We mooted the possibility that some of the issues we have identified with the proposed special zone provisions might be able to be addressed by characterising it as a subzone of the Rural Zone, and thereby importing both the policies and assessment criteria related to ONLs.

190. Mr Barr gave careful consideration to that in his reply and, having reflected on it, we agree with his reasons for excluding that as a possibility.

191. We also contemplated the potential to address our concerns by revising the proposed zone provisions. We have discussed the principal issues we had with the zone provisions we were provided with. We have not discussed the many points of detail that we identified as also requiring amendment. In summary, the suggested objective, the policies, the performance standards, and the activity classifications were all unsatisfactory for a large-scale development in an ONL. This raises questions in our minds as to how many cracks of the whip a submitter gets before the answer is that "enough is enough".

192. In that regard, we thought that a comment of the Environment Court in another Plan Change process where the suggested zone provisions went through multiple iterations was apposite:

> *"We accept that the Variation contains elaborate zoning provisions for comprehensive development of a considerable area of land in ways that are intended to avoid, remedy and mitigate adverse effects on the environment. But the successive amendments, however well intentioned, certainly presented the opposing parties and the Court with a proposal that continued to be altered up to the end of the appeal hearing. So we doubt that the proposal presented by Infinity Group to the Council in 2001 had been prepared with sufficient care having regard to the importance of the site and the scale of the development"*[49].

193. But more fundamentally, we were not persuaded that a special zone designed to provide the flexibility GBT say is required, would be the most appropriate way to achieve the strategic objectives of the PDP, and more specifically, ensure the degree of protection that section 6(b) of the Act requires. The existing resource consent conditions exhibit the degree of rigor we consider is required. If and to the extent GBT seeks to undertake its development in ways not provided for in those resource consents, our view is that such changes need to be considered under the regulatory framework of the Rural Zone in order to provide the confidence required that the end result will protect the key attributes of the ONL.

194. In summary, even excluding the OS/F area from consideration, we do not find the case for the Special Zone proffered by GBT to be made out. We find that the retention of the existing Rural Zone provides the most appropriate framework within which the existing resource consent can be implemented, if that is indeed what GBT wishes to do. We accept that imposes costs and risks for GBT, but we believe GBT accepted those costs and risks when it chose to commence implementation of the resource consent. It also increases the risk that some of the positive features proffered by the landowner by way of environmental compensation may not come to pass. On the other hand, key public access entitlements are already registered

[49] *Infinity Group v QLDC* C010/2005 at [59]

on the titles and to the extent other matters are put at risk, that is an unavoidable consequence of the conclusions we have come to.

## 5. SUMMARY OF CONCLUSIONS

195. For the reasons set out in our report, we recommend to Council that the submission of GBT seeking a bespoke zone for Glendhu Bay and Parkins Bay be rejected. It follows that we recommend that the further submissions of Upper Clutha Environmental Society , Tui Advisors, John May and Noel Williams should be accepted, and the further submission of NZ Fire Service (to the extent that it supported part of the principal submission) rejected.

196. Given the lack of any evidential support, we likewise recommend rejection of GBT's submission seeking uplifting of the ONL classification over the site.

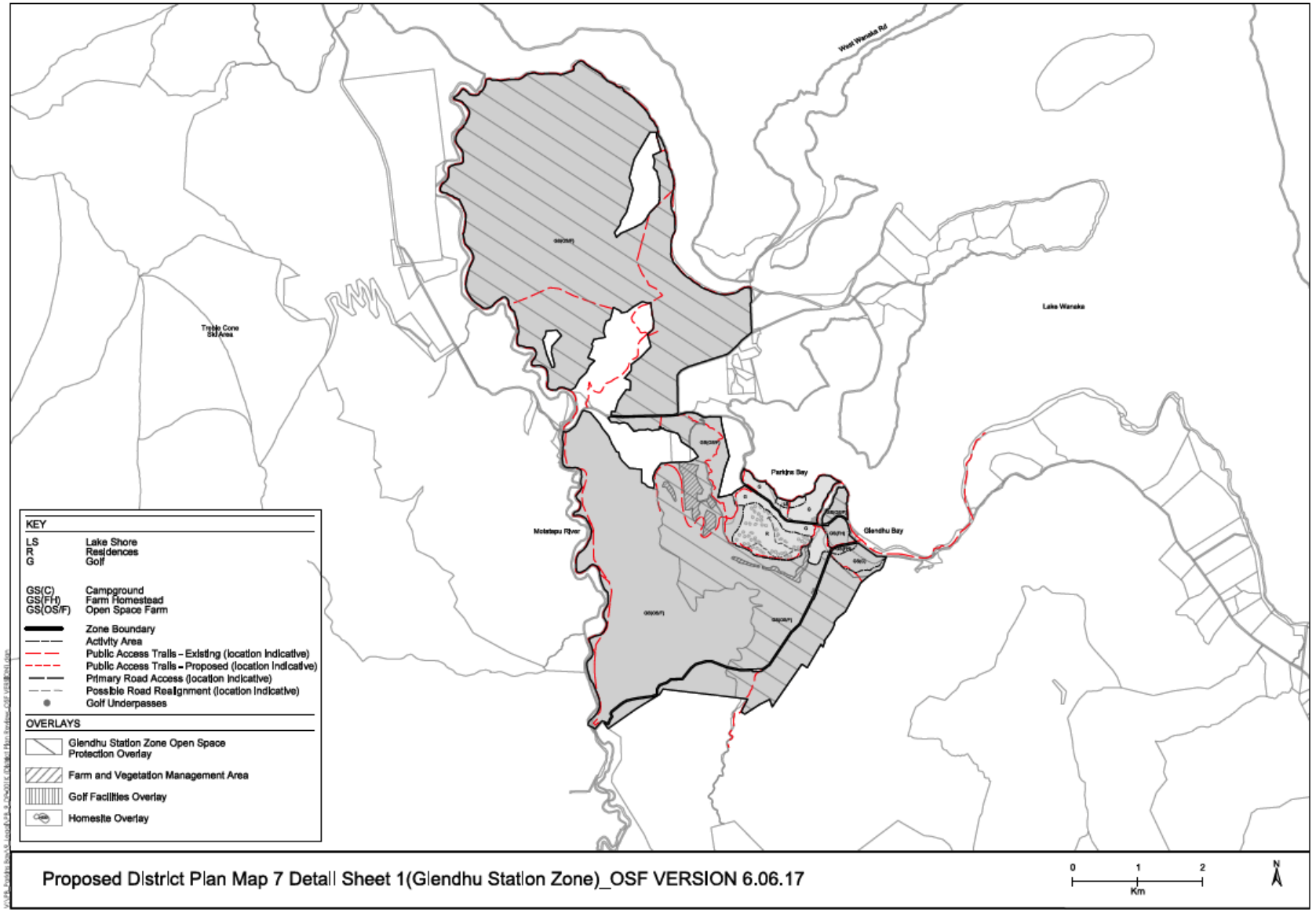
197. Because we are recommending retention of the status quo, no further Section 32AA analysis is required.

For the Hearing Panel

Trevor Robinson, Chair
Dated: 27 March 2018

Attachments:

Appendix 1- Revised GBT Structure Plans


West Wanaka Rd
Treble Cone Ski Area
Lake Wanaka
Parkins Bay
Motatapu River
Glendhu Bay
KEY
LS Lake Shore
R Residences
G Golf
GS(C) Campground
GS(FH) Farm Homestead
GS(OS/F) Open Space Farm
Zone Boundary
Activity Area
Public Access Trails – Existing (location indicative)
Public Access Trails – Proposed (location indicative)
Primary Road Access (location indicative)
Possible Road Realignment (location indicative)
Golf Underpasses
OVERLAYS
Glendhu Station Zone Open Space Protection Overlay
Farm and Vegetation Management Area
Golf Facilities Overlay
Homesite Overlay
Proposed District Plan Map 7 Detail Sheet 1(Glendhu Station Zone)_OSF VERSION 6.06.17
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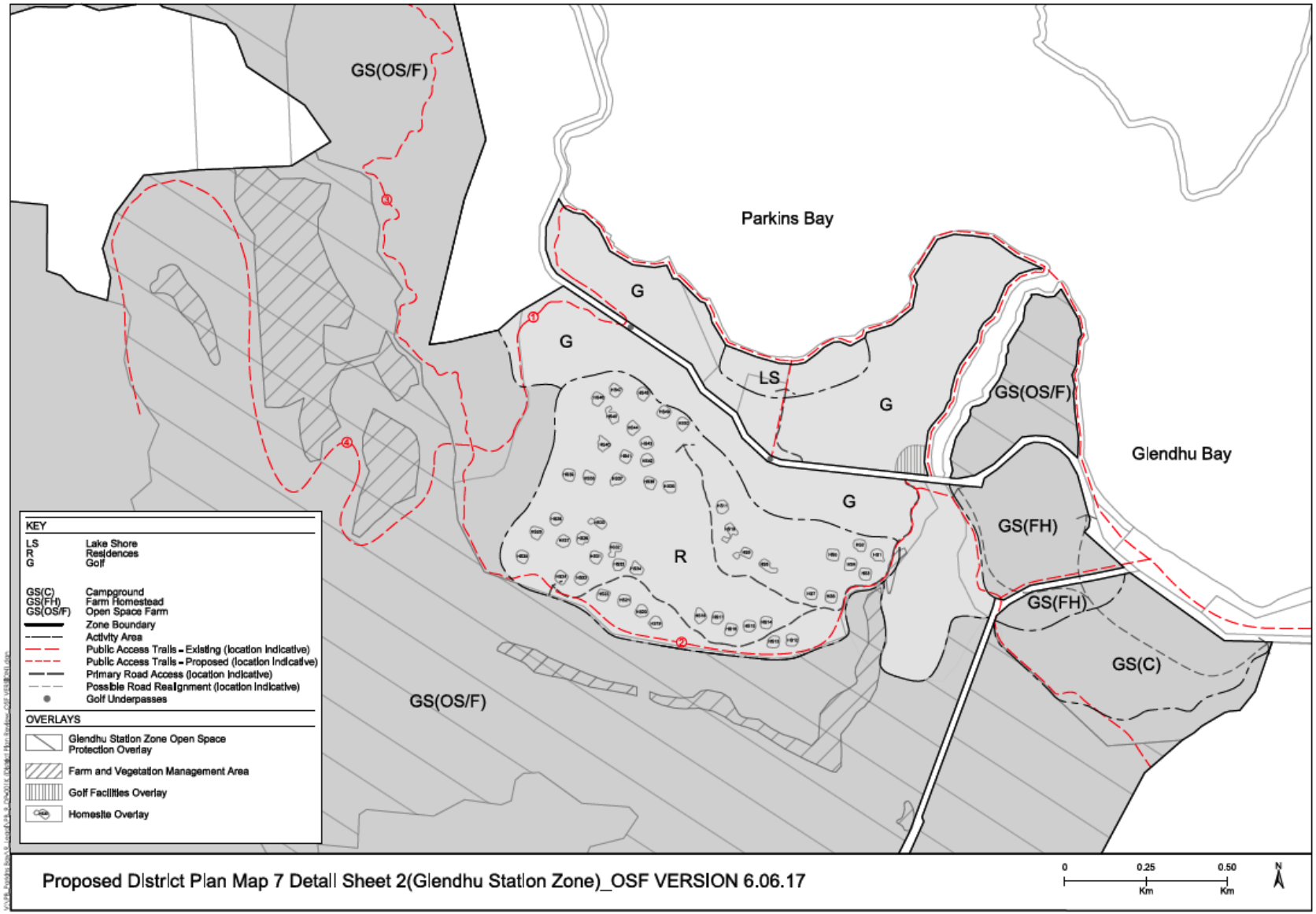
GS(OS/F)
Parkins Bay
G
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Glendhu Bay
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GS(FH)
GS(C)
GS(OS/F)
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Glendhu Station Zone Open Space Protection Overlay
Farm and Vegetation Management Area
Golf Facilities Overlay
Homesite Overlay
Proposed District Plan Map 7 Detail Sheet 2(Glendhu Station Zone)_OSF VERSION 6.06.17
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